



**STATE OF NEW MEXICO  
SECOND JUDICIAL DISTRICT COURT**

March 14, 2022

Chief Justice Michael Vigil  
New Mexico Supreme Court  
271 Don Gaspar Ave.  
Santa Fe, NM 87501

Senior Justice C. Shannon Bacon  
New Mexico Supreme Court  
271 Don Gaspar Ave.  
Santa Fe, NM 87501

Justice David Thomson  
New Mexico Supreme Court  
271 Don Gaspar Ave.  
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Justice Julie Vargas  
New Mexico Supreme Court  
271 Don Gaspar Ave.  
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Justice Brianna Zamora  
New Mexico Supreme Court  
271 Don Gaspar Ave.  
Santa Fe, NM 87501

RE: Second Judicial District Court Updated Operating Plan

Dear New Mexico Supreme Court Justices:

The Second Judicial District Court (“SJDC”) respectfully submits its updated Resumed Operating Plan pursuant to the Emergency Response Team (“ERT”)’s updated COVID-19 guidelines. SJDC has worked to ensure access to justice amid the COVID-19 public health emergency in full compliance with the established ERT protocols.

In recognition of changes in the COVID-19 pandemic, the SJDC has updated its public health precautionary procedures and practices. The SJDC has prepared its updated operations plan in accordance with the ERT’s new guidance and the local COVID-19 circumstances present in Bernalillo County.<sup>1</sup> The SJDC will continue to balance the safety and well-being of everyone in our courthouses with our commitment to resume full court operations and address current case/jury trial backlog. The updated COVID-19 safety protocols will better serve the justice system by

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<sup>1</sup> Bernalillo County announced a 14 day case number of 1,993 for the week of February 15, 2022 to February 28, 2022. The positivity test rate is currently 6.80%. <https://cvprovider.nmhealth.org/public-dashboard.html>

increasing the amount of jury trials while continuing to protect the public, litigants, attorneys, jurors, Judges, and court staff during the health emergency.

Throughout the pandemic, SJDC has remained vigilant and has worked diligently to ensure the health and safety of everyone who enters our courthouses and judicial buildings. SJDC recognizes that many who enter do not have a choice to be at court. SJDC continues to take a thoughtful approach moving into the next phase of COVID-19 management.

#### **I. New ERT Protocols at the Second Judicial District Court**

As the pandemic evolves, SJDC will adjust and apply any new standards that are set forth in the ERT's protocols. Based on the most current ERT guidance and protocols, beginning on Monday, March 21, 2022, the SJDC will adhere to the following:

- Members of the public can enter a courthouse without a protective face covering, but health screening questions will continue to be required for anyone to gain entrance to a judicial building or courthouse.
- Masks will be required for any person inside a courtroom or jury assembly areas. This includes members of the public, jurors, attorneys, defendants, litigants, law enforcement, court staff and judges. Judicial staff will have extra masks available in the respective courtrooms. SJDC will have signs on the outside doors of each courtroom and hearing room that will state that masks are required to enter into the courtroom/hearing room.
- Physical distancing of at least three (3) feet will be enforced inside courthouses and while people enter or exit a judicial building. Previously, people were required to maintain a minimum of six-feet distancing to help limit the spread of COVID-19. All individuals in the courtroom shall remain a minimum of three (3) feet from another person. Where space permits, SJDC will continue to instruct individuals to maintain six (6) feet from another person.
- SJDC employees, judges, and hearing officers must continue to wear masks while interacting with the public and in courtrooms or jury assembly areas; when not interacting with the public, employees are no longer must wear a protective face covering inside their work areas.
- The Judiciary will maintain a requirement for weekly COVID-19 testing of unvaccinated judicial employees, judges and contractors.
- All employees and judicial officers shall only be required to wear an approved protective face covering while in a courtroom, jury assembly area, or while interacting with the public; masks are not required while entering and exiting the building.
- Members of the public, including jurors, defendants, and sheriffs are required to wear a mask while in a courtroom or jury assembly area.

- All personnel will be provided with a desktop air purifier, which shall be operated at all times while working.
- SJDC will remove plexiglass barriers where appropriate.
- Daily screening questions for the public, employees, and judicial officers.
- Immediate reporting of symptoms or contact regardless of vaccination status.
- Weekly testing requirements for unvaccinated employees and contractors.
- All other protocols for COVID-19 symptoms, contact, and testing, including self-isolation for positive cases.
- Approval of Gathering Requests by the ERT.
- Continue its cleaning and sanitization practices.

The SJDC has recognized the importance of scheduling the number of jury trials actually needed to move court dockets as efficiently as possible in order to promptly adjudicate these important cases and clear away pandemic-related backlogs. The three (3) feet physical distancing will assist the SJDC in conducting additional jury trials and allow for the SJDC to efficiently use available space in courtrooms and jury assembly areas. The SJDC will continue to balance the safety and well-being of everyone in our courthouses with our commitment to resume full court operations and address current case/jury trial backlog.

The SJDC has worked closely with community justice stakeholders in implementing and carrying out the scaled-back policies and procedures in response to the COVID-19 pandemic. As the courts go forward with gradually transitioning to more in-person processes, the SJDC will continue to collaboratively work with the justice stakeholders to ensure the needs of those affected by the transition are appropriately considered.

## **II. Updated SJDC Divisional Plans**

Each division of the SJDC has developed a plan addressing safety and hygiene, docket management, and scheduling issues specific to each division. The respective divisions have plans to resume certain in-person proceedings on a different scale and rate than others based on the unique needs of each division. The Criminal, Civil, and Children's Court divisions will continue to prioritize jury trials. While criminal and juvenile cases will take priority, the Civil Division will continue to hold jury trials. A summary of divisional plans will be provided where relevant with citation to the full plan of the division.

Attached you will find the following plans for each SJDC division: Criminal Division (**Exhibit A**), Civil Division (**Exhibit B**), Children's Court Division (**Exhibit C**); and Family Division (**Exhibit D**).



The **Criminal Division** will prioritize addressing the backlog of criminal cases in accordance with New Mexico Supreme Court Order No. 21-8500-026 (November 2, 2021) and its submitted jury trial backlog plan. The SJDC Criminal Division will generally continue to conduct hearings remotely with the exception of jury and bench trials, out-of-custody hearings in limited situations, and where a party is unable to access the technology needed for remote hearings. More extensive in-person hearings for in-custody defendants will be phased-in when conditions permit safe transport of inmates and there is less risk of spreading COVID-19 within the jail and prisons, once more defendants can pass court screening questions, and as per Supreme Court Orders. *See Exhibit A.*

The **Civil Division** will continue to hold many hearings and bench trials remotely, while jury trials will be in-person at the Bernalillo County Courthouse in courtrooms 520 and 720 and also at the ERT approved offsite venues. The Civil Division has two approved offsite venues: (1) the Metropolitan Court Jury Assembly Room, and (2) the State Bar Center for *voir dire* and the Court of Appeals in Albuquerque for jury trials. In-person hearings will be held onsite where the nature of the hearing requires in-person attendance, such as guardianship and conservatorship cases, or where a party lacks the ability to attend remotely. As is the practice with all divisions, when in-person hearings are held, the courtrooms are cleaned between hearings, and social distancing is enforced during the hearings and offsite jury trials. *See Exhibit B.*

The **Children's Court Division** will continue to hold in-person trials (jury and bench) in Delinquency Proceedings pursuant to its previously implemented Phase Plan. Children's Court plans to continue to conduct hearings remotely with the exception of jury and bench trials. Children's Court continues to prioritize in-custody youth, considering the quarantine and safety protocols at both the Metropolitan Detention Center ("MDC") and Youth Services Center ("YSC"), and Supreme Court/ERT safety protocols. The Children's Court prioritizes in-person proceedings for jury trials and bench trials, contested competency hearings, plea hearings and dispositional hearings. The Children's Court also requires all Termination of Parental Rights hearings to be conducted in person under Phase one of its Phase Plan.

The **Family Court Division** will continue to review caseloads to determine those matters that can be decided by memorandum order. The majority of Family Court hearings are held remotely as are all Court Clinic mediations. Pursuant to Supreme Court Order No. 22-8500-003, almost all kinship guardianship hearings have been held in-person. Allowing participants in a hearings to sit closer than six (6) feet from each other will address issues regarding the number of individuals in the courtrooms, particularly in kinship guardianship cases. Participants will still maintain at least three (3) feet distance from each other in accordance with the ERT protocols. The Family Court has been operating successfully using remote technology and has offered its courtrooms and hearing rooms to assist the Criminal Court, Children's Court, and Civil Court with their plans to resume in-court proceedings. The Family Court plan focuses on gradually increasing these proceedings while keeping some proceedings remote to control the number of people coming into the courthouse and the number of staff needed in the courthouse. *See Exhibit D.*



### **III. Court Programs and Administration**

The SJDC divisions and programs include the Clerk's office, the Center for Self-Help and Dispute Resolution, Judicial Supervision and Diversion, Foreclosure Settlement, Assistant Outpatient Treatment, Interpreters, Jury, Competency, Elder and Disability Initiative, Court Clinic, Domestic Violence, Purchasing, Fiscal Services, Information Technology, Court Monitors/Reporters, Human Resources, and Court Administration. All staff assigned to a program or division will adhere to masking, social distancing, gathering limits, air purifiers, cleaning, daily screening, and self-isolation requirements as provided in the ERT's public health protocols and FAQs. The Court will continue to ensure that hand sanitizer, cleaning supplies, and ERT approved masks are readily available for staff. The Clerk's office will continue to accept filings in person, via fax, via email and via File & Serve to ensure access to justice.

The Court will continue to promote frequent hand-washing and maintain COVID-safe signs visible for the staff and the public. The Court will provide masks to the public upon request and will have hand sanitizer readily available. For areas where the public may visit, other than courtrooms, where masks are optional, the Court will continue to regularly sanitize public areas of the courthouse. For programs that can provide services remotely, the default for those services will continue to be through telephonic or video technologies.

### **IV. SJDC Jury Trials**

Because the ERT protocols have been adjusted to three (3) feet social distancing for jury trials, SJDC can increase its jury trials and is able to increase capacity of jury trial courtrooms to up to twenty-one (21) courtrooms at the Bernalillo County Courthouse. SJDC is now able to conduct more jury trials and hearings at the Bernalillo County Courthouse, specifically increasing the number of courtrooms available for jury trials. The Court's focus will be on clearing the backlog of criminal cases in accordance with New Mexico Supreme Court Order No. 21-8500-026 (November 2, 2021). Complex civil trials will be conducted at approved off-site venues, while still ensuring safety during the public health emergency.<sup>2</sup> Currently, SJDC can conduct one jury trial at the John Brown Juvenile Justice Center under current ERT protocols.

#### **a. Noncompliance Issues**

To keep our jurors safe, the SJDC has consistently enforced the Supreme Court's Order regarding emergency health protocols for all prospective jurors and empaneled jurors. Court staff and judicial officers must wear masks while in the courtrooms as outlined in the Supreme Court's Order. Additionally, court participants and visitors are required to wear a mask in the courthouse. SJDC recognizes that the use of masks by members of the public, judges, and staff is the most current effective way to keep everyone safe and healthy.

SJDC will continue to exclude persons from the courthouse who refuse to cooperate with or who do not pass established screening protocols or refuse to wear a mask or other face covering in required areas. Court officers can and will eject jurors who do not comply with mask requirements. If a juror says they are not going to wear a mask, judges will excuse them for cause as that is

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<sup>2</sup> SJDC is very grateful and appreciative of the ERT for approving its plan for permitting offsite jury trials.

justified as a necessary safety protocol during the current pandemic. All ERT requirements are posted at SJDC court entrances and on the Judiciary's public website. SJDC takes ERT protocols and individuals' safety seriously.

## **V. Conclusion**

The SJDC remains committed to enforcing all the ERT's established health protocols that have worked in preventing the spread of COVID in our courthouses, including screening, use of authorized face masks and PPE, proper ventilation and stringent cleaning and sanitizing as detailed in the SJDC Resumed Operations Plan. SJDC strives to manage court dockets and resolve cases efficiently and expeditiously. SJDC recognizes the important constitutional rights and interests at stake in all case types. Particularly in criminal and juvenile matters, SJDC understands the important constitutional rights and interests at stake, including the right to a speedy trial for individuals accused of crimes, many of whom are currently detained awaiting trial.

In summary, implementation of a minimum three (3) feet physical distancing for participants in jury trials statewide will allow the SJDC to focus on resuming full court operations and clearing out case backlogs to best serve the needs of the litigants and the public who depend on our courts for timely and efficient justice services. SJDC is committed to clearing our backlogs and returning to providing safe and efficient justice to all parties in Bernalillo County.

Please let us know if you have any questions or need additional clarification regarding the Second Judicial District Court's Updated Operational Plan.

Respectfully,



Hon. Marie Ward  
Chief Judge



Katina Watson  
Court Executive Officer

cc: Second Judicial District Court Judges  
Emergency Response Team  
Artie Pepin, Director, Administrative Office of the Courts

## **SECOND JUDICIAL DISTRICT COURT CRIMINAL DIVISION** **UPDATED COURT SERVICES PLAN**

This is the updated plan of the Criminal Division of the Second Judicial District Court (“SJDC” or “Criminal Division”) for the Criminal Division’s continued safe operations during COVID-19 protocols. The following assumptions are made:

- Social distancing of a minimum of three (3) feet per person remains in effect;
- No limits will remain regarding the number of members of the public who may gather in one room of any building; rather, the focus will be on limiting the number of individuals in any one area to the three-foot social distancing requirement;
- The use of face masks remains a requirement while in courtrooms, hearing rooms, and jury assembly areas;
- Some type of quarantine provisions will continue to apply;
- The Emergency Response Team’s (“ERT”) screening questions will continue to apply to the public and court employees.

### **Managing the number and protection of people in the courthouse**

The Criminal Division continues to conduct all types of hearings, bench trials, and jury trials. All the following types of hearings continue to go forward, conducted using a variety of technological means: scheduling conferences, conditions of release, pleas, sentencings, competency, pretrial conferences, preliminary hearings, substantive motions, and detention hearings.

The New Mexico Supreme Court issued Order No. 22-8500-003 on June 29, 2021 (effective July 19, 2021). That Order changed the default for certain types of hearings to become in-person, but also allowed the Chief of each court discretion in determining the extent of implementation of the in-person hearings. In the Criminal Division, an administrative order was entered that provides for a phased-in approach. Currently, the Criminal Division remains in Phase I, which provides for some out-of-custody hearings—primarily pleas, competency determinations, and judgment and sentencing hearings—to occur in-person, as well as certain other hearings if the judge makes a determination it is in the best interest of justice. Bench trials and jury trials continue to occur in-person. Thus, most hearings continue to be held remotely.

We do not intend to substantially modify court processes in the near future with regard to hearings, though modifications to the Pod system (discussed more below) are planned, with an eye toward returning to a more typical non-COVID-19 calendar.

### ***In-custody hearings***



During the pandemic, the Criminal Division implemented a Pod hearing system for in-custody defendants. This system involves the use of the five Pods available at the Metropolitan Detention Center (“MDC”). Inmates at MDC are housed into one of the five Pods (each of which contains multiple housing units) and this hearing calendar is based on the inmate location at MDC in order to limit movement between Pods and comply with the CDC and NMDOH protocols for detention facilities, including mandatory intake quarantine and quarantines associated with exposure to or positive COVID-19 status.

When the Pod system was originally implemented, one judge was assigned to a Pod for an entire week for non-probation violation hearings and heard whatever hearings were in that Pod; there was also one additional judge assigned to hear probation violation hearings on most mornings, as well as a preliminary hearing docket. While the original Podsystem allowed for in-custody hearings to continue forward during extraordinary circumstances while also ensuring the safety of inmates, it was also defendant-based versus judge-based and thus judges had little docket control.

The Pod system has since gone through revisions. The current Pod system continues to operate based on defendant location, but judges cycle through the five Pods daily rather than remaining in a single Pod for the entire week. While this provides for a more complicated calendar, it allows for better docket management for judges as they now schedule and hear their own substantive motions based on when that judge will be in that Pod for the week. Detention motions, which have strict timelines, continue to be scheduled in all Pods based on defendant location. For example, Judge A might be in Pod D on Monday and Pod E on Tuesday; Judge A could schedule his or her own substantive motion hearings in either of those Pods, depending on defendant location, but will likely also hear detention motions in addition to his or her substantive motions

It is important to note that MDC’s staffing issues have a significant impact on the Criminal Division’s ability to schedule and hear matters. As has been recently reported, MDC faces a staffing shortfall of approximately 40%. While the National Guard has been called in to help with some duties, such as COVID-19 testing and vaccination events, it appears that assistance will be ending in mid-March. The Criminal Division has worked closely with MDC to ensure that any new measures or processes it adopts neither violate MDC’s need to comply with CDC and NMDOH guidelines nor compromise the safety of in-custody defendants or staff.

Unlike in-person hearings in which multiple defendants are transported and require one or two officers to supervise those defendants while in the courtroom, in many instances remote hearings require an officer for each hearing. This is because the historically high number of quarantined defendants during COVID-19 means that officers often are required to go directly into the Pod where defendant is housed with a laptop in full PPE to allow the defendant to access the hearing. On the other hand, we have been unable to switch to in-person transport, because most MDC defendants have either been in an intake quarantine (which lasts between ten (10) and fifteen (15) days) or a COVID exposure or COVID positive quarantine unit and thus would not be able to

pass court screening questions to enter the building; nor would the SJDC inmate cells be large enough to hold a significant number of inmates with social distancing measures. For example, in January 2022, more than seventeen (17) housing units were under quarantine, which means that none of those defendants would have been able to enter the courthouse. In addition, because of staff shortages, remote hearings are staffed by the same officers who conduct transport. This means that remote hearings and in-person hearings cannot happen at the same time as of right now.

MDC has asked the NMDOH for some modifications to its guidelines that would shorten some quarantine periods. In addition, the number of quarantined defendants has dropped as COVID-19 numbers lessen. MDC is also actively trying to address its staffing issues. The Criminal Division is therefore looking at several options for movement toward a more normal in-custody calendar and continues to discuss those ideas with its justice partners, including MDC. This will likely have to be a phased-in approach, but we believe it will be possible to move toward that calendar in the next couple of months. There are many moving parts that must be considered. Not only does MDC provide officers for our Pod hearings, it also provides officers for competency evaluations, probation violations, transport for trials, attorney/client visits that cannot be done via Zoom, out-of-jurisdiction hearings, and Metropolitan Court hearings. Because of the staffing shortage, any changes will have to be implemented carefully as change in one docket impacts other dockets.

As of now, there are usually a total of six (6) criminal judges holding in-custody hearings in the Criminal Division in court during the week at any one time. The remaining judges are scheduled for jury trials or other docket matters, such as bench trials, longer hearings with special settings or other out-of-custody matters. All parties and witnesses generally appear remotely via Zoom. No inmates are transported to SJDC, except in exceptional circumstances.

For these in-custody hearings, judges generally appear from their chambers, while a court monitor is in the courtroom, hearing room, or other space. Clerks and bailiffs either appear remotely or in the courtroom, depending on whether there will be any audience or media appearing in-person. If there will be individuals appearing for a hearing in-person, judges hear the case from the courtroom. People physically in the courtroom continue to be kept to a minimum both because of safety concerns and because this allows the Criminal Division to use spaces not traditionally considered courtrooms for hearings. Documents and exhibits are exchanged via email to further limit contact between people. Witnesses appear either via Zoom or telephonic conferencing bridge; family members and the media may listen via phone, watch via Zoom, or may come into the courtroom where media carts display the proceedings to the audience. Social distancing is in effect in the courtroom.

This system has been working well in ensuring access to justice and making sure hearings proceed without backlog, though there have, of course, been some technological issues which cause remote hearings to generally take longer than in-person hearings. We note the Zoom system has generally been working well for these hearings, and experience has taught us how to utilize

various functions in Zoom such as the interpreter function and the breakout rooms to improve remote hearings.

### ***Out-of-custody hearings***

The Criminal Division holds most out-of-custody hearings remotely via Zoom. Out-of-custody hearings operate outside of the Pod system; judges have always scheduled and heard their own out-of-custody hearings and this continues to be the case.

Only if a party does not have access to the equipment to appear remotely or other compelling circumstances exist will they appear in-person. After the Supreme Court's Order No. 21-8500-015, some types of matters are specifically scheduled to be in-person in out-of-custody hearings, but those instances continue to be relatively rare and if the parties are unable to appear in-person because of COVID-19 issues, they are allowed to appear remotely. To the extent possible, the physical appearance of defendants is excused; the parties all participate through remote hearings. Witnesses are also allowed to appear remotely. The default for these hearings is Zoom; parties must contact the judge's office prior to the hearing if any party wants to make a request to appear in-person or to appear remotely through alternative means.

If appearing in person, parties are screened before entering the building. Parties and the public entering the courthouse are asked a number of screening questions regarding health and travel, and they are instructed not to enter if they answer any of the screening questions in the affirmative. Hand-wash stations are available at the entrance of the courthouse and hand sanitizer is available in several areas throughout the courthouse. Court staff have been provided cleaning supplies and have been instructed to sanitize public and commonly used areas. Court staff and members of the public are required to wear face masks and observe social distancing while in the courthouse. Contact tracing logs are in effect in all courtrooms and hearing rooms.

As the Criminal Division will currently be continuing primarily with remote hearings, the number of people in the courtroom and courthouse should continue to be limited. We do anticipate a phased-in approach to bringing more individuals back in-person but intend to revisit that issue in a couple of months. This is primarily because of space issues—remote hearings allow us to utilize spaces not usually used for hearings—and because of the increased number of individuals already being brought into the courthouse for jury trials.

### ***Accommodation, especially where in-person appearances are necessary***

Continuances are generally granted without penalty when any party is unable to appear because of illness or when caring for someone ill or when other COVID-19 related complications prevent appearance such as issues with childcare or when one of the parties appearing in-person has been instructed not to enter the courthouse after self-screening at the entrance.



Courtrooms continue to comply with social distancing requirements. As of March 21, 2022, the Supreme Court has reduced the required amount of social distancing to three feet. This is a change from the six (6) feet requirement. However, the Criminal Division does not intend to move directly to a three (3) feet social distancing in most areas immediately. We are in the process of reconfiguring our trial courtrooms for the new social distancing requirements; most areas in the courtroom will follow approximately four (4) feet social distancing, except where three (3) feet social distancing will substantially improve the ability to conduct court. Six (6) feet social distancing will continue to be observed in areas where reducing social distancing would not improve outcome.

The SJDC Purchasing Division, Administration, and Criminal Division staff are working through various courtroom layouts to determine the optimal configuration for observing the required social distancing. We currently use three specific courtrooms for trial. After the modifications, we anticipate that we will have definitely four, and potentially five, courtrooms configured for trial.

Rather than focusing on the number of people allowed in a single courtroom, the focus continues to be on the ability to social distance and maintain at least three (3) feet between individuals in all directions. The modification to three (3) or four (4) feet social distancing will also mean that members of the public will generally be able to view trials in-person. Where that is not possible, the proceedings will be able to be viewed by the public and media via live Zoom feed. Seating is currently marked off to ensure six feet of distance per person; that is being reduced to four feet in most instances.

The Criminal Division will continue to allow self-represented litigants and parties to file by email and fax.

### **Scheduling and addressing jury trial backlog**

#### ***Non-jury trials***

As noted above, the Criminal Division will continue to maximize the use of remote hearings for in-custody and out-of-custody defendants to the fullest extent possible.

In-person hearings will continue to be staggered and the courtroom cleared and common areas sanitized between hearings where possible. Defendants' appearance will be waived where practical, and witnesses will appear remotely where possible.

#### ***Backlog trials***

The Criminal Division's original plan focused on in-custody defendants with a trial length of no more than five (5) days. While in-custody defendants continue to take priority for trial, we have also moved to setting out-of-custody trials and to setting longer trials (both in and out of custody). We have also re-adopted trailing docket calls and have been increasing the number of

cases on the trailing docket call to address trial backlogs. We are also utilizing other measures, discussed more fully below, to address trial backlog, and have submitted our required backlog trial plans.

### ***Bench trials***

Bench trials are utilized where parties waive a jury trial. We offer the parties the opportunity for bench trials as part of clearing the existing backlog. To date, very few bench trials have been agreed to by the parties.

### ***Settlement conferences***

Our original plan utilized voluntary settlement conferences. Very few parties agreed to said conferences.

On January 14, 2022, the New Mexico Supreme Court entered an order allowing judges to refer the parties to mandatory settlement conferences. The Criminal Division immediately began scheduling mandatory settlement conferences. To date, more than 100 settlement conferences have been scheduled with pro tems or sitting judges not assigned to the underlying case. These settlement conferences are generally more abbreviated in nature than a settlement conference in a civil case; long mediation statements are not required and generally the conference takes about an hour. Parties are required to review their case prior to the conference, provide a short statement of the facts and issues, and send someone to the conference with settlement authority. In most instances, where the parties do not settle the case at settlement conference, that case is set on the next trailing docket.

The Criminal Division is encouraged by early results of the settlement conferences. While initially the plea or nolle average was only about 25%, that has steadily been climbing and now is at approximately 38%. We are hopeful that we will eventually approach the 50% settlement rate that we saw during the use of settlement conferences in the implementation of LR2-308. Settlement conferences are proving to be a valuable tool in addressing trial backlog.

### ***Jury trials***

Jury trials have resumed in the SJDC under the measures outlined in the previous plan.

When trials originally resumed, the number of trials scheduled was very limited, starting with one trial a week, then increasing to one criminal trial per day (scheduled on Monday, Tuesday, and Wednesday) for a total of three (3) trials per week. Three (3) and four (4) day trials were scheduled to begin on Monday, two (2) and three (3) day trials on Tuesday, and one (1) and two (2) day trials on Wednesday. This schedule was established to enable the criminal judges to remain on the Pod schedule (see above) by limiting trials to those judges not in a Pod rotation that week in order to maximize the use of remote hearings, minimize the need for transport of inmates, ensure only one voir dire was happening a day in the Criminal Division, and keep the number of

individuals in the courthouse to manageable limits within social distancing guidelines. Trials were also generally limited to those trials no longer than five-days-a-week to counter the difficulty with cases that require larger juror panels. In short, we were concerned about our initial ability to draw in enough jurors to hold a rape trial or child sex abuse trial, though we are attempting to mitigate that problem through the use of special questionnaires (see below). *See* Managing Juries and Jury Trials During COVID-19 by the NCSC Center for Jury Studies (“Managing Juries and Jury Trials During COVID-19”), available at <https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus%20Webinars/Juries-COVID-19-Webinar.ashx> (last visited May 19, 2020). Criminal trials were scheduled and prioritized based on custody status (in-custody defendants take precedence), the length of trial, the length of the term of custody, and age of the case.

The scheduling of longer and more complex trials began in early 2021, slightly increasing the number of trials scheduled at any one time as those trials go into multiple weeks.

In December 2021, after discussions with the Supreme Court and submission of SJDC’s criminal backlog plan, the Criminal Division moved back to a modified trailing docket for most cases. Cases lasting more than seven (7) days continue to receive specific trial dates.

Trailing dockets were phased in, beginning with a modest thirty-two (32) cases, and have now expanded to monthly trailing dockets of more than 100 cases (held over two (2) days). This also means that the number of scheduled trials has increased substantially. In January 2022, the Criminal Division also took over use of the jury assembly room, which had been previously utilized by the Civil Division for complex trials. Using the jury assembly room, more jury trials can be scheduled as voir dire can be completed in most cases in one panel. Prior to using the jury assembly room, many trials required three voir dire panels because of social distancing requirements.

With three (3) feet social distancing, the Criminal Division anticipates that it will be able to increase the number of scheduled trials, as there will be additional areas for those trials to commence and the courtrooms will allow for additional jurors during voir dire for cases not pulling their jury in the jury assembly room. The Criminal Division has been regularly borrowing space from the Family Court Division, Civil Division, and Children’s Court; we believe that the new social distancing requirements should reduce our need to borrow courtroom spaces from other divisions within the courthouse.

We have now assembled a sample courtroom (Courtroom 338) that modestly reduces social distancing to four (4) feet in most instances. With this revised set-up, we are able to increase the number of jurors and audience members, while complying with social distancing requirements. With the modifications, we were able to provide seating and walk-ways with a six (6) feet social distance radius for the judge, court monitor, bailiff, and witness, and approximately four (4) feet social distancing for two (2) security personnel, fifteen (15) jurors, two (2) district attorneys, two (2) defense attorneys, defendant, victim, one (1) media person, and numerous audience members.



The slightly decreased social distancing allows for most jurors to be seated in the jury box, with the remaining jurors in the front-row benches. This is an improvement; previously jurors could be more difficult to see as they were scattered throughout the audience benches.

We plan to continue to use dedicated jury trial courtrooms and will be phasing in the new social distancing measures. We have purchased and have available minicomputers on the counsel table that allow for remote bench conferences and private attorney-client communication. Counsel are also allowed to use their cellphones for texting during trial. Most bench conferences take place in jury rooms, where the monitor or court reporter has a portable computer.

### ***Use of special jury questionnaires***

We continue to use a version of the COVID-19 special questionnaire and have implemented a special form for those questionnaires. Special COVID-19 questionnaires are sent to all potential jurors and allow for deferred jury service (rather than excusal) based upon specific COVID-19 concerns. In line with best practices, one deferral is generally granted as a matter of right. *See Managing Juries and Jury Trials During COVID-19*. Any subsequent jury service deferral requests are screened for good cause by the judge assigned to grand jury duty or Presiding Judge.

Closer to the trial date, the Criminal Division now uses another special questionnaire related to factors more specific to the upcoming trial in certain types of cases (homicide, CSP, or child CSP) and/or as directed by the judge. Each special questionnaire is drafted by a staff attorney to identify issues in that trial, and the staff attorney make recommendations to the judge regarding additional questions that might be included in the special questionnaire.

The Criminal Division allows the parties to confer remotely or in-person and excuse jurors for time, hardship, and “for cause” conflicts prior to having the jurors report for service. *See Managing Juries and Jury Trials During COVID-19* (recommending the use of written questionnaires and remote pre-screening for time, hardship, and for cause conflicts).

The early deferrals and excusals have reduced the number of jurors needed to be called into the courthouse and appear to be aiding in ensuring we have enough jurors report to seat a jury. To date, only three (3) trials have failed to proceed because of our inability to seat a jury because of a lack of enough jurors

### ***Voir dire and jury handling***

Voir dire is conducted in our large jury assembly room which allows for a gathering of larger groups of people while observing strict social distancing. Voir dire is also conducted in the trial courtrooms as necessary. Where multiple trials are scheduled to start on the same day, the more serious case is allocated the jury assembly room for jury selection as those trials require a

larger voir dire panel; the judge with the less serious case selects a jury in one of the trial courtrooms.

With the reduction in social distancing, we will be able to bring in more jurors at one time, while still ensuring the public and court staff's safety. As discussed above, jury assembly has been reconfigured to allow for four (4) feet social distancing between jurors. We continue to focus on safety and intend to phase-in some of the changes. For example, while the jury assembly room could have been reconfigured to allow 100 jurors to be in jury assembly with three (3) feet social distancing, we are instead starting with four-foot social distancing and limiting the number of jurors to up to 70 because this number is sufficient to seat a jury in most cases in one jury panel. The number of jurors brought in for a panel is based on historical data from the jury division about how many jurors are generally needed in specific types of cases. Most cases only require a jury panel of around 45 jurors. While we technically can bring in 70 jurors in the assembly room under our four-foot social distancing, in those instances only 45 would be brought in.

In order to limit the number of people in the courthouse and the number of individuals refused admittance because of the screening questions we instituted a telephone "check-in" for jurors the day before the trial. Jurors are asked if any of their answers have changed to the COVID-19 questionnaire.

Once the jury is selected, the jurors have previously reported to a courtroom adjacent to the courtroom where the trial is to occur or in our large conference room if the trial was scheduled for courtroom 338. The change in social distancing requirements means that we will again be able to use at least some of our traditional jury rooms. We are working on configuring courtroom 416's jury room, which is the largest of the jury rooms, for three (3) to four (4) feet social distancing and plan to reconfigure other jury rooms where possible. The traditional furniture in the jury room has been removed to accommodate the social distancing and ensure jurors maintain that social distancing. Instead of the traditional juror tables, we have ordered and are installing individual small portable tables for each juror. The ability to use jury deliberation rooms once again for jury deliberation will open additional courtroom space—that had previously been allocated to jury deliberation—and allow us to schedule additional hearings and trials.

### ***Addressing justice partner concerns regarding the resumption of jury trials***

We have continued to consult with our justice partners (MDC, LOPD, DA, and private defense bar) concerning the resumption of jury trials. Many of the issues identified in our original plan have been resolved. Some of the issues that continue to come up include: the use of facemasks for witnesses and an inability to read juror and witness facial expressions because of masking, concerns about needing more attorney-client meeting time immediately prior to trial, limited MDC staffing and its impact on attorney-client meetings and trial preparation, last-minute cancellations of trial for COVID-19 exposure/positive/symptoms, and difficulty seeing jurors during trial and voir dire (which we believe will be remedied by the reduction in social distancing). We will

continue to meet and consult with our justice stake holders about these issues and plan to consult them as we phase-in new processes.

### ***Grand jury***

SJDC resumed grand jury on April 16, 2021, after extensive conversations with OSI, the DA, the AG, and representatives from the defense bar. The standing schedule is a half day every other Friday and one full day on alternating Fridays, with the agencies generally determining who utilizes what time. The Court also agreed to provide additional grand jury time when feasible and urged the parties to discuss plea negotiations earlier as to do so would free up space and jury staff to add additional grand jury time if the Court knew that trials would vacate with sufficient notice to call in grand jurors and for the DA's office to notice witnesses and defendant.

In most months, the Criminal Division has been able to provide additional grand jury time by converting each Friday to full days and adding additional days in the middle of the week when fewer trials are proceeding or there are otherwise openings in space and staff (such as during Conclave or around the Thanksgiving holiday). We have also provided some additional grand jury subpoena time when requested as that requires less notice since there are no witnesses. So, for example, in March 2022, grand jury is scheduled on four (4) full-day Fridays and one additional Wednesday. We have maintained our preliminary hearing calendars and those calendars are not fully utilized—there remains additional space to bring additional cases into the system through preliminary hearing.

### **Keeping the public, employees, and judges safe**

All staff and judges, as well as courthouse visitors, jurors, parties, and attorneys in the courthouse are required to wear a face mask; after March 21, 2022, the Court will comply with the modified mask requirements. The public will be required to wear a face mask while in courtrooms, hearing rooms, and jury rooms. Employees will be required to wear face masks in those same areas and when interacting with the public. We intend to have our bailiffs carry facemasks to be provided if necessary to the public as they enter courtrooms.

Cleaning supplies have been provided to court employees who are instructed to frequently sanitize commonly used areas.

Signage and markings will continue to ensure proper social distancing. Six-feet social distancing will continue in many places; reduced social distancing to at least three-feet will only be implemented where to do so will significantly improve court operations.

Elevator capacity currently continues to be reduced to two or three individuals per car for the smaller cars and four individuals for the larger elevators. *See* NCSC COVID-19 and Courthouses Planning to Get Back to Business Inside the Courthouse, available at <https://vimeo.com/419071777> (last visited May 19, 2020) (discussing choke point caused by



limiting elevator capacity and limiting capacity in elevators using signage, waiting protocol, and conductors to direct people into elevators). This may be modified slightly after March 21, to allow for better people movement but three- to four-foot social distancing will be maintained.

Court staff and the public will continue to be screened prior to coming to the courthouse and will be instructed not to come to the courthouse if they answer in the affirmative to any of the screening questions.

Appearances of defendants with vulnerable health will be excused where practical, and vulnerable people called for jury duty will, when requested, have jury duty deferred.

Courtroom logs will continue to be maintained so that contact tracing is possible when necessary.

### **Challenges and needs**

Trials under COVID-19 restrictions require additional resources in terms of staffing, security, equipment, and space. Remote hearings, while providing arguably increased accessibility, generally take more time than in-person hearings. MDC's continued staffing issues, combined with rolling quarantines, present scheduling issues and limit options.



EXHIBIT A



EXHIBIT A



EXHIBIT A





EXHIBIT A



EXHIBIT A













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## **Second Judicial District Court Civil Division**

### **Updated Operations Plan**

The following is the Second Judicial District Court (“SJDC”) Civil Division’s Updated Operations Plan (“Plan”).

#### **Managing the number and protection of people in the courthouse**

##### *Continuation of Remote Hearings*

The Civil Division will continue to hold in-person hearings in guardianship/conservatorship cases. The Civil Division plans to continue holding the majority of other hearings remotely. For those hearings where an in-person hearing is required (and approved by the Chief Judge), either because of the nature of the hearing or if a party, including a self-represented litigant, does not have the ability to participate remotely, judges will ensure that social distancing is practiced and that face coverings are used while in the courtroom. Additionally, the Civil Division plans to have signs on the outside doors of each courtroom and hearing room that will state that masks are required to enter into the courtroom/hearing room. Judicial staff will have extra masks on hand in the courtroom.

##### *Accommodations*

Continuances will continue to be granted without penalty when any party is unable to appear because of illness or when caring for someone ill or when other COVID-19 related complications prevent appearance. Courtrooms will be structured to ensure social distancing in line with the updated protocols. If in-person hearings are conducted, the courtrooms are cleaned between each hearing.

In jury trials where social distancing cannot accommodate the public in the courtroom, the proceedings may be viewable by the public and media via video feed from a separate room (“audience room”) where social distancing will be observed. Seating will be marked off to ensure six feet of distance per person. Depending upon the number of individuals from the public wishing to view the proceedings, the viewing room may be a conference room, hearing room or available courtroom. Alternatively, the Zoom link may be shared with a member of the public if requested.

In order to limit the number of people in a courtroom, the media may also be asked to view the proceedings from the audience room or be required to share feeds so only one camera/media person is present in the courtroom.

##### *Alternatives to In-Person Filings*

The Civil Division will continue allowing electronic or fax filing for attorneys and self-represented litigants for guardianship/conservatorship cases. Self-represented litigants can continue to fax file or send pleadings to a designated email address for general civil cases, as well as appeals. Attorneys will continue to be allowed to file pleadings via fax and email for case types not currently allowed by the rules for e-filing. For individuals who do not have access to a fax machine

or computer, they can still come to the courthouse and leave pleadings on the first floor for every civil judges' office.

### **Jury Trials**

The Civil Division and Criminal Division will conduct jury trials in a similar manner. The Civil Division and Criminal Division will work together to maximize limited resources in our Jury Division and Purchasing Division. The Criminal Division will be utilizing courtrooms at the Bernalillo County Courthouse for jury trials, and the Civil Division will be using offsite venues for civil jury trials. Both divisions will work closely together to address the backlog and efficiently use available space in courtrooms and jury assembly areas.

#### *Bench trials*

Bench trials will continue to be held remotely, unless upon the request of the sitting judge, the Chief Judge allows a bench trial to be held in person.

#### *Jury Trials*

The Civil Division has two offsite venues that it will continue to use. See SJDC's December 8, 2021 Memorandum Seeking Emergency Response Team Approval for Metropolitan Court Jury Assembly Room as an Offsite Jury Trial Location for Second Judicial District Court Civil Division. See also, SJDC's February 7, 2022 Memorandum Seeking Emergency Response Team Approval of State Bar Center as Offsite Voir Dire Location and Court of Appeals in Albuquerque as a Second Offsite Jury Trial Location for Second Judicial District Court Civil Division.

Courtrooms 520 and 720 will continue to be configured to accommodate 12-person jury trials with appropriate social distancing as discussed in the SJDC's July 31, 2020 plan until they can be reconfigured by the Jury and Purchasing Divisions. In the meantime, three (3) people will be allowed at each counsel table with at least three (3) feet distance between each person.

The Civil Division has two separate calendars for trials to be held in Courtrooms 520 and 720, and two separate calendars for the two offsite locations. Judges will use other courtrooms and hearing rooms for non-trial hearings to accommodate the designated courtrooms being available for jury trials.

The Civil Division will continue to provide water and snacks for juries during trial. Each juror will be provided a Ziplock bag that contains snacks for each day of trial. The jurors will be cautioned by the bailiffs to not share their snacks with other jurors. The Civil Division will not provide lunch to jurors who are in deliberation, but instead those jurors will be allowed to bring their lunch and eat outside or go somewhere for lunch.

Jury deliberation for trials held in courtrooms 520 and 720, as well as breaks during the trial, will continue to be held in courtrooms adjacent to the trial courtrooms. The jury will have access to the bathrooms in the adjoining jury deliberation room. Any areas used by the jury during this time will be cleaned after the jury's use.

The witness stand will be disinfected between witnesses. The podium will be disinfected between lawyers. Parties will continue to be encouraged to provide exhibits to witnesses in a witness notebook. Any exhibits that are entered into evidence during trial will be placed in a plastic sleeve, be wiped down by the bailiff and handed to the witness.

### *Scheduling*

Cooperation between the divisions will continue to ensure multiple trials are not scheduled to begin on the same day as stated in the SJDC's July 31, 2020 plan.

### *Exhibit Notebooks*

Parties will continue to be instructed to provide exhibit notebooks for each juror, the judge, opposing counsel, witnesses, and the court reporter/monitor. Each juror will be provided their own notebook/binder. At the end of the day, the exhibit notebooks will remain in the courtroom on the juror's designated seat, along with their bag containing hand sanitizer, pen, and notepad. The bailiff will secure the courtroom upon the prompt departure of counsel and parties to ensure that no one has access to the courtroom once the jurors adjourn for the day. The bailiff will be responsible for cleaning the juror seats, counsel tables, and other used areas of the courtroom. No one will enter the courtroom unless the bailiff or a member of the judges' staff is present in the courtroom. If a contested exhibit is not admitted until later in the trial (foundation, relevance, authenticity issues, etc.), then the exhibit will be provided to the jurors in a plastic insert that can be disinfected by the bailiff. Enough copies will be provided to ensure the jurors do not have to pass around exhibits.

Each juror will also receive their own set of jury instructions to eliminate the need for passing around the instructions.

### *Juror questions during trial*

When jurors need to communicate with the Court during a trial, they will be instructed to use their provided notebooks to write any questions on a sheet of paper. The notebook paper will be placed into a plastic sleeve which will be sanitized by the bailiff before being handed to the judge and placed into the record.

### *Proposed Introductory Jury Instruction*

The Civil Division will continue to use a version of the proposed introductory jury instruction which it received from the New Mexico Trial Lawyers' Association on COVID-19.

### *Settlement deadlines*

In accordance with Supreme Court Order No. 20-8500-022, the Division will strictly enforce, except in the case of extraordinary circumstances, settlement deadlines to occur no later than five (5) days before the date scheduled for jury selection or bench trial.

### *Concerns regarding witnesses and parties*

The Civil Division judges plan to continue to allow remote appearances of witnesses.

### *Use of special jury questionnaires*

The Civil Division will continue to use special jury questionnaires as before. The questionnaire will stress the importance of trials to the pursuit of justice and the need to maintain proper safety protocols. The questionnaires will be related to more specific factors of the case such as what the case is about and identify the attorneys, parties and witnesses to see if any of the jurors know any of these individuals. Based on the answers to the questionnaire, the Court will allow the parties to remotely confer and request excusals of jurors for time, hardship, and “for cause” conflicts prior to having the jurors report for service. Early deferrals and excusals will reduce the number of jurors needed to be called into the courthouse and may help with successfully seating a jury.

### *Voir dire*

The process of selecting a jury and the safety protocols employed in selecting a jury have been addressed in SJDC’s Offsite Plans. The Civil Division will continue to pick juries for trials to be held in the courthouse as stated in SJDC’s July 31, 2020 reopening plan. After the Jury and Purchasing Divisions have reconfigured the civil courtrooms in the courthouse, it is expected that more jurors will be able to be seated in the courtrooms for voir dire. Voir dire for the two offsite facilities are explained in the above-mentioned offsite plans.

### *Confidential Communications*

Currently, the Civil Court Judges allow the parties and attorneys to have their cell phones in the courtroom for confidential communications.

Additionally, the parties will be allowed to communicate with each other via written communication.

### **Safety Protocols**

All participants and attendants for jury trials and in-person hearings will be required to wear a facemask while in the courtroom or hearing room.

The Civil Division will continue to utilize the SJDC contract tracing log to track the name, phone number, address/email address, date of visit, and time of each person entering each courtroom and hearing room. The bailiff assigned to the courtroom or hearing room will ensure the information is obtained from each party, visitor, judge, and SJDC staff. The information will be retained for four weeks in accordance with ERT updated guidelines.

In summary, the SJDC Civil Division will continue to update its operational plans in accordance with ERT protocols to ensure access to justice and to safeguard the health and wellbeing of our community.

## **SECOND JUDICIAL DISTRICT COURT CHILDREN’S COURT** **UPDATED OPERATIONAL PLAN**

**The following is the Second Judicial District Court (“SJDC”) Children’s Court Division Update Operating Plan (“Plan”).**

### **Managing and protecting the number of people in the courthouse**

#### ***Continuation of Remote Hearings***

The Children’s Court Division will continue to hold in-person trials (jury and bench) in Delinquency Proceedings pursuant to the previously approved SJDC Resumed Operations Plan and Phase Plan. When the New Mexico Supreme Court Order No. 21-8500-015 adopted amendments to the New Mexico Judiciary Emergency Court Protocols Nos. 1 & 2 and ordered the expansion of in-person proceedings to commence on or before Monday, July 19, 2021, the Children’s Court Division, in consultation with the Presiding Judge and approved by the Chief Judge, began its Phase Plan to expand in-person proceedings. The Phase Plan prioritized in-custody youth, considered the quarantine and safety protocols at both the Metropolitan Detention Center (“MDC”) and Youth Services Center (“YSC”), and Supreme Court/ERT safety protocols. The Children’s Court Phase Plan contemplated three (3) phases, however, only Phase One was implemented. Phase one of the plan includes in-person proceedings for jury trials and bench trials, contested competency hearings, plea hearings and dispositional hearings. All other hearings remained virtual including detention hearings and preliminary hearings. As to Child Welfare/Abuse & Neglect proceedings, the Children’s Court Phase Plan also required all Termination of Parental Rights hearings to be conducted in-person, unless otherwise ordered by the Court. Due to the space limitations at Children’s Court, however, when a jury trial is occurring, all other matters are conducted remotely via virtual platform.

In November and December, 2021, the Children’s Court worked collaboratively with the Criminal Division, in developing its Criminal Jury Trial Backlog plan. In the plan, the Courtrooms at the Children’s Court Juvenile Justice Center (“JJC”) are allocated to the Criminal Division to hold jury trials. In addition, in January, 2022, the SJDC converted the JJC location to temporary locations for MDC inmates to be transported and attend remote hearings with the Criminal Division due to the Bernalillo cyber-attack. All Children’s Court stakeholders were advised that the Phase Plan was suspended and all hearings, including Termination of Parental Rights hearings would be conducted virtually, unless otherwise ordered by the Court. The Civil, Criminal, and Children’s Court Divisions are working together to maximize limited resources of our Jury and Purchasing Division in reconfiguring courtrooms based upon the updated social distancing protocols. The SJDC is continuously updating courtroom configurations based on updated social distancing protocols. This is expected to increase courtroom availability for more in-person hearings.



### *In-custody hearings*

The Children's Court Division will continue to use videoconferencing and the POD system currently being used for in-custody youth at YSC, and youth at MDC. However as MDC staffing issues improve, the Court anticipates MDC youth to be transported. As the Children's Court Division transitions from the facility being used to assist in the criminal jury trial backlog, more youth will be transported for in-person hearings from both facilities. Youth shall be transported for any jury and bench trial in a delinquency matter. Where in-person hearings are required or Court ordered, all parties shall appear in-person before the Court.

Children's Court currently utilizes time for any detention and warrant hearings with youth in MDC during a thirty (30) minute set block each day. Additionally, any party may move for a transport order for the in-person appearance of an inmate at a hearing in a Child Welfare case and an individual transported upon approval by the assigned Judge, and Chief Judge. This is coordinated with the Criminal Division to avoid any conflict POD settings. The Criminal Division has a plan to step down from the POD system and the Children's Court will modify its plan in conjunction with the Criminal Division.

For all in person, hybrid and virtual hearings, the judge, a court monitor, calendaring clerk, and a bailiff, and any litigants, witnesses or member of the public will follow Supreme Court/ERT safety protocols and orders regarding social distancing and the wearing of masks. All individuals in the courtroom shall remain a minimum of three (3) feet from another person. Where space permits, the Court will continue to instruct individuals to maintain six (6) feet from another person. Documents and exhibits are generally exchanged via email to further limit contact between people. Social distancing as outlined in the ERT updated protocols remains in effect in the courtroom as well as viewing rooms.

SJDC Children's Court Division will continue to work with its justice partners including the Children Youth and Families Department ("CYFD"), Respondent's attorneys ("Ras"), Youth Attorneys and Guardian ad Litem ("YA/GAL"), the District Attorney's Office Children's Court Attorneys ("CCA"), the Law Offices of the Public Defender - Child's Attorney ("CA"), the private defense bar ("CA"), MDC, and YSC, on the transitions from virtual hearings to in-person proceedings under its Phase Plans. While a majority of proceedings for in-custody and out of custody individuals will continue virtually for the near future, except as outlined for jury trials and bench trials, Children's Court will transition to more in-person proceedings for Termination of Parental Rights, Adjudications, Pleas and Dispositions as part of its Phase Plan.<sup>1</sup> The Court is in

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<sup>1</sup> The only anticipated transport from MDC will be for jury trials and for hearings with exceptional circumstances in which the Chief Judge has approved transport. Transport from YSC may be ordered by the individual judge, approved by the Chief. This does not preclude Motion for In-Person Appearances being filed and considered by the judge and approved by the Chief.

good communication with YSC and MDC and will make adjustments to the Phase Plan based on any outbreaks at the facilities.

### ***Out-of-custody hearings***

The Children's Court Division will continue to hold the majority of its Child Welfare and Delinquency out-of-custody hearings remotely via videoconference following its Phase Plan. If a party does not have access to the technology to appear remotely, parties can request to appear and use a videoconference room at the courthouse. Children's Court has found most individuals appear virtually by computer, tablet or phone with no issue as instructions are provided on all Notice of Hearing/Virtual hearing invites, and counsel is instructed to work with clients in advance of hearings. Where the Phase Plan provides hearings by videoconference, parties must file a motion prior to the hearing if any party is requesting to appear in-person. Where the Phase Plan provides for in-person hearings, or a Court orders an in-person hearing, parties must file a motion prior to the hearing if they are requesting to appear virtually.

If appearing in-person, litigants are instructed to self-screen before entering the building. Litigants and the public entering the courthouse are asked questions about health and travel as required by the Supreme Court/ERT and may not to enter they answer in the affirmative to any question. Hand sanitizer is available in several areas throughout the courthouse and court staff members have been provided cleaning supplies and sanitize public and commonly used areas. Court staff and members of the public are required to wear face masks and observe social distancing while in the Courtroom, and in the Courthouse should Supreme Court/ERT mask requirements change. Additionally, the Children's Court Division has signs on the outside doors of each courtroom and hearing room that state that masks are required to enter into the courtroom/hearing room. Judges will ensure that social distancing is practiced and that face coverings are used while in the courtroom.

Since the start of the pandemic, the Children's Court Division has conferred with stakeholders and there has been general agreement with the outlined processes for Child Welfare, Adoptions, and Delinquency hearings.

### ***Accommodations, especially where in-person appearances are necessary***

Continuances are granted generally when any party is unable to appear because of illness or when caring for someone ill or when other COVID-19 related complications prevent appearance such as issues with childcare or when one of the parties appearing in-person have been instructed not to enter the courthouse after self-screening at the entrance.

Courtrooms are structured to ensure social distancing. The SJDC Purchasing Division, Administration, and Children's Court Division staff are continuously working through various courtroom layouts to determine the optimal configuration to comply with social distancing protocols between the jury, court staff, the parties, and attorneys while ensuring all involved are

fully engaged in the hearing process. The Court limits in-person appearances in Child Welfare matters (hearings or trials) to Courtrooms 124 and 163, the largest Courtrooms at JJC to ensure social distancing. Courtrooms 153 and 154 are configured to conduct smaller in-person hearings and hybrid proceedings.

### ***Alternative to In-Person Filings***

The Children's Court Divisions will continue to allow self-represented litigants, Adoption, and Child Welfare litigants to file pleadings via email, as e-filing has not been implemented for these types of sequestered matters.

### **Scheduling and Addressing Trial Backlog**

#### ***Non-jury trials***

As noted above, the Children's Court Division will continue to maximize the use of remote hearings to the fullest extent possible but transition to more in-person hearings in its Phase Plan. Children's Court continues to prioritize hearings to ensure time-limits are met. No Title IVE federal funding<sup>2</sup> has been impacted because of potential untimely hearings. Children's Court Special Masters assist with Mental Health dockets, AOT dockets, as well as Children's Court dockets. Special Masters continue to hear ten (10) day Custody hearings, permanency/review hearings, along with detention and warrant hearings. This allows the Children's Court Judges to focus time on substantive motions, Adjudications, Termination of Parental Rights, and Adoptions. The Children's Court will begin to work with our Mental Health partners to develop a plan to resume in-person or hybrid hearings for the mental health docket. These hearings are conducted in medical facilities which often have strict COVID-19 protocols.

#### ***Backlog trials***

The Children's Court Division is not facing a backlog. The Court and its justice partners have done extensive work to make delinquency cases a priority, especially as it relates to youth in custody during the State of Emergency. Many matters resolve without the need for trial, and jury trials have been conducted.

As to Child Welfare matters, Child Welfare partners adopted quickly to virtual hearings at the start of the pandemic. The Children's Court Division utilizes a Pretrial Scheduling Order for Motions for Termination of Parental Rights and is in the process of updating a trailing docket system for Adjudications. Adjudications and Termination of Parental Rights hearings have remained a priority. The Children's Court also prioritizes adoptions including conducting a virtual National Adoption Day, and plans to reinstitute Spring Adoption Day in May, 2022.

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<sup>2</sup> Title IVE is federally funded through the Family First Prevention Services Act (FFPSA), enacted as part of Public Law (P.L.) 115—123.

### *Jury trials*

Jury trial resumed at the SJDC under the measures outlined in the previously plan. Since the original plan, construction at the JJC facility was completed. The Children's Court Division at JJC has two large courtrooms and a conference room to accommodate trial, jury deliberation room and voir dire. To maintain social distancing while allowing for public access to the courts, two courtrooms/large rooms are used for any jury trial taking place or multi-litigant bench trials. Under the Children's Court Updated Resumed Operations Plan, Courtroom 163 is now used for jury trials, Courtroom 124 for deliberations and Chama conference room is used for voir dire. If, necessary, the Chama conference room can be converted to a jury deliberation room. The four Children's Court Judges coordinate dates of jury trials so that only one is held at any one time. The courtroom is configured to ensure three (3) to six (6) feet social distancing between jurors. Three (3) people may be allowed at each counsel table ensuring at least three (3) feet distance between each person. Counsel are given the option of using cell phones or equipment for private communication during the trial provided by the court. Short bench conferences occur in writing on the equipment provided by the court and made part of the record.

The Court continues to use a version of the COVID-19 special questionnaire and procedures set forth in the Criminal Divisions Updated Resumed Operations Plan. Jurors are provided with their juror bags, including a bottle of water, notepad, pen, and masks for trial. Jurors will not be provided lunch but are permitted to bring their own lunch and instructed to eat outside or go somewhere for lunch. Jurors will use Courtroom 124 for deliberations and have access to two secured restrooms. Any areas used by jurors shall be cleaned regularly and after juror use.

Parties are instructed to provide exhibit notebooks for the jury, judge, opposing counsel, witness and court monitor. Exhibit notebooks are prepared with exhibits in plastic sleeves to be wiped down. If a contested exhibit is not admitted until later in the trial, then the exhibit will be provided to the jurors in a plastic insert that can be disinfected by the bailiff.

When jurors have questions or need to communicate with the Court during a trial, they are instructed to use the notebooks. The questions are placed in a plastic sleeve which will be sanitized by the bailiff and handed to the judge. The question is placed into the record.

The Children's Court Division will continue to utilize the SJDC contact tracing log to track the name, phone number address/email address, date of visit and time of each person entering each courtroom and hearing room. The bailiff assigned to the courtroom will ensure the information is obtained from each visitor, party, judge, and SJDC staff and retained for four weeks in accordance with ERT updated guidelines.

In summary, the SJDC Children's Court Division will continue to update its operational plans in accordance with ERT protocols to ensure access to justice and to safeguard the health and wellbeing of our community.

## **Second Judicial District Court Family Court Division Updated Plan**

During the pandemic, the Second Judicial District Court (“SJDC”) Family Court Division (“FCD”) has been able to maintain a near 100% clearance rate for our cases. Between March 1, 2020 and February 28, 2022, 17,965 cases were opened in the FCD and 17,846 cases were closed. In other words, the FCD has been able to maintain our workflow throughout the COVID-19 pandemic with the use of remote settings and court-directed case management, in accordance with the judiciary’s emergency health protocols.

### **Hearings:**

The majority of our hearings are held remotely as are all Court Clinic mediations. We utilize Google Meet or Zoom for video hearings and telephonic hearings are also primarily held using the Google Meet platform. Pursuant to Supreme Court Order No. 22-8500-003, almost all kinship guardianship hearings have been held in person. There has been some difficulty with limiting the number of people in the well of a courtroom as there are often many parties in a kinship guardianship case along with interpreters and a guardian *ad litem*. Allowing participants in a hearing to sit closer than six (6) feet from each other should solve this issue. Participants will still maintain at least three (3) feet distance from each other in accordance with the ERT protocols, and Court staff has been instructed to maintain more than three (3) feet distance between participants whenever possible.

All evidentiary hearings will take place on either Google Meet or Zoom. However, some hearings must be held in person. For instance, unless there are exigent circumstances, all show-cause hearings for alleged violations of orders of protection will be heard in person. Judge Ramirez and Judge Chavez Baker are also setting in-person hearings for anyone who is found to be a credible threat in a domestic violence case and does not file an affidavit regarding surrender of any fire arms pursuant to the Family Violence Protection Act, NMSA 1978, § 40-13-5(A)(2)(a) (2019).

The FCD hearing rooms utilized by hearing officers are too small to safely, within the COVID-19 protocols, have in-person hearings. Remote hearings for domestic violence matters has worked very well, with parties able to appear remotely and not have to be in a small hearing room with each other. Video platforms allow hearing officers and judges to see the entire face of the party testifying. In order to ensure a fair and impartial hearing in line with the Rules of Evidence, the hearing officers require each party to show the entire room around them to make sure that children, witnesses, and the other party are not in the room with that party.

All summary settings and pre-trial conferences will be held telephonically. Feedback from attorneys has been positive about the ability to conduct short non-evidentiary hearings over the phone. The use of Google Meet for telephonic hearings has also allowed the hearing officer or judge to see how many people are on the call and using the Meet breakout-room system to allow



for meetings between parties and counsel and to keep witnesses in a waiting area until they are called to testify.

The Presiding Judge, in consultation with the Chief Judge, will continue to allow certain evidentiary hearings to be in person. For instance, when there are significant concerns about a child being in the home during a hearing, the hearing may be moved to in-person. All in camera hearings with minor children are also in person as they are sequestered. Some bench trials have been in person due to one or more parties' lack of access to technology.

The FCD regularly collaborates with the other respective divisions in the Court to ensure effective and efficient court operations. In an effort to assist with the Criminal Division jury trial backlog, the FCD has coordinated with the Criminal Division to allow the Criminal Division to use hearing rooms and courtrooms that are assigned to the FCD. The FCD will continue to offer to work with any other division at the SJDC, including allowing jury deliberations on our floor, if and when that is helpful. When the Criminal Division is utilizing a courtroom, the FCD and the court monitor pool have utilized office space for monitors to take the record and FCD judicial officers have remained in their offices during remote hearings.

#### **Exhibits:**

1. If the number of pages for the exhibits exceeds ten (10) pages, judges and hearing officers are requiring parties to submit exhibits in two binders. The exhibits must be pre-marked and include the exhibit list and must be provided to the court at least two-business days prior to the evidentiary hearing.
2. If the number of pages for exhibits is ten (10) pages or fewer, judges and hearing officers are utilizing their assigned proposed text email wherein parties and counsel send exhibits, which must be pre-marked and include the exhibit list and must be provided to the court at least two-business days prior to the evidentiary hearing.
3. Child Support and the Domestic Violence Division ("DVD") both have their own designated email accounts for receiving exhibits, to wit:
  - a. Child Support: [albdcsissuedocs@nmcourts.gov](mailto:albdcsissuedocs@nmcourts.gov)
  - b. The DVD: [albd-dvfilings@nmcourts.gov](mailto:albd-dvfilings@nmcourts.gov)

The exhibit system listed above has been in place and utilized since, approximately, June of 2020 and has worked well.

#### **Court Clinic:**

This plan is an update of the plan submitted by the Court Clinic in April 2021 when in-person services resumed. This plan will be reviewed on an ongoing basis in consultation with the Family Court Judiciary and Court Administration in order to determine the need for modifications.

#### Procedures for Continued Court Clinic In-person Appointments:

1. **The Clinic will require all members of the public continue to wear masks while present in the Clinic.** Parties are referred by court order to the Clinic. Therefore, parties have no choice but to attend and participate in the Clinic process. Therefore, the Clinic is akin to a court room or a jury deliberation room.
2. Masks for adults and children will be available at the Clinic counter to allow for staff to provide masks for parties who do not have a mask. Signs will be posted on the door to the Clinic and inside the Clinic to alert the public that masks are required.
3. The Clinic will continue to limit the number of individuals in the Clinic for in-person appointments at any given time, to reduce the crowding of people waiting for their appointment.
4. In-person interviews and observations require families to be in the Court Clinic for one (1) to three (3) hours – time that is comparable to the hearings and trials occurring in courtrooms.
5. The continued ability to conduct (and eventually increase) in-person appointments are important steps along the path to the eventual resumption of Court Clinic operations.

#### Families Coming to the Court Clinic:

1. Letters to families and attorneys will include information regarding safety protocols and procedures the Second Judicial District Court and the Court Clinic are utilizing.
2. Letters will include language that masks are required to be worn at all times while in the Court Clinic.
3. Families will receive at minimum of two (2) weeks' notice for appointments, unless the Court requires a more immediate appointment.
4. The Court Clinic will continue to ask families to inform the Clinic (prior to coming to a scheduled appointment) of any symptoms, potential exposure to COVID-19 or confirmed exposure/test. In such instances, appointments will be rescheduled.
5. Families will continue to be asked to document their visit to the Court Clinic on a Sign In Sheet, which also serves as a contact tracing log. The SJDC is working on developing a Google Form for this log.

#### **Interpreters:**

1. Scheduling the interpreters for hearings are made in consultation with Rosa Lopez-Gaston, Court Interpreter Supervisor;
2. Language interpreters can be on-site, by phone or Google Meets;
3. Remote hearings will otherwise use Zoom as it has an interpreter function that allows for easier remote hearings;
4. Sign language interpreters will need to be on-site and all distancing protocols will be adhered to;
5. Safety protocols will be followed, including maintaining updated ERT social distancing;
6. Use of assistive technology and sanitation procedures related to such use will be followed.

**General matters:**

1. All employees and judicial staff will wear face masks/covers when interacting with the public and when they are in a courtroom or hearing room. They will also follow the 6-ft distancing rule whenever possible and not be within three (3) feet of each other.
2. FCD staff and judicial officers will also keep their air filters on and will continue to refrain from any gathering of more than eight (8) court staff/judicial officers. All meetings, except the FCD judge's meeting (as that is only four people) will be held remotely via Google Meet.
3. Staff will ensure general cleaning and sanitation measures are completed in accordance with ERT protocols.
4. Cleaning courtrooms and hearing rooms between hearings will also be completed.
5. Court staff will continue to use the Judiciary's contact tracing form.